

**Agenda Item:**

**Report to:** STANDARDS COMMITTEE

**Date:** 6 March 2007

**Report from:** BOROUGH SOLICITOR AND MONITORING OFFICER

**Title of report:** **CONSULTATION ON AMENDMENTS TO THE MODEL CODE OF CONDUCT FOR LOCAL AUTHORITY MEMBERS**

**Purpose of report:** To seek the views of Standards Committee on the proposed changes and responses to the questions posed.

**Recommendations:** Members instructions are requested on the response to the Consultation.

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## INTRODUCTION

1. Members will recall contributing to the consultation on the review of the Code of Conduct undertaken by the Standards Board on behalf of the Office of the Deputy Prime Minister, as it was then.
2. The Local Government White Paper, Strong and Prosperous Communities included an announcement that the Government intended to put in place a clearer, simpler and more proportionate code of conduct for members of local authorities.
3. In this report I shall summarise the proposed amendments to the Code and set out the questions posed. The draft amended code is attached as an appendix. The full consultation paper can be viewed at [www.communities.gov.uk](http://www.communities.gov.uk) and alternative formats (eg Braille or audio) can be obtained by e-mailing [alternativeformats@communities.gsi.gov.uk](mailto:alternativeformats@communities.gsi.gov.uk) and quoting "Consultation on Amendments to the Model Code of Conduct for Local Authority Members" and product code 06 LG 04359.

## SUMMARY OF PROPOSED AMENDMENTS

4. In the following the references to paragraphs in brackets relate to the paragraphs of the draft model code.
5. Unlawful Discrimination – to delete reference to unlawful discrimination (paragraph 2(2)(a))

Due to a finding of the Adjudication Panel that the Panel has no jurisdiction to make findings of unlawful discrimination, this element of the current paragraph 2(a) has been deleted and replaced with a duty not to do anything that may seriously prejudice his/her authority's ability to comply with any of its statutory duties under the equality enactments. The positive duty to treat others with respect remains.

6. Bullying - adds a provision specifically proscribing bullying (paragraph 2(2)(b))

Bullying between members and officers is already covered by the Council's adopted Protocol which is enforceable through the Standards Committee against members. A breach of the Code of Conduct and reference to the Adjudication Panel by an Ethical Standards Officer after report, would carry more severe sanctions, of course. The Code is also wider than the Protocol since it extends to any person.

The Government has accepted the recommendation of the Standards Board that there should be no statutory definition of bullying and that this should be left to Standards Board Guidance, which is likely to

include an acceptance that a single act can amount to bullying as well as a pattern of behaviour.

7. Disclosure of confidential information – it is proposed to allow members to disclose confidential information where such disclosure is in the public interest (paragraph 3(a)(iii))

Paragraph 3(a) of the existing Code – prohibits disclosure of information given to the member in confidence or which the member believes to be of a confidential nature. An Adjudication Panel has found as a matter of law that this conflicts with Article 10(1) of the European Convention on Human Rights. The finding was that the Code should be read so as to allow for the disclosure of information of a confidential nature where it is in the public interest to do so.

Any such disclosure would have to be reasonable and in the public interest, made in good faith and not in breach of any reasonable requirements of the authority eg local protocols. The Government is leaving further definition on this to the Standards Board guidance. The Government envisages that the guidance would restrict disclosure to the following situations:- where the member reasonably believes that disclosure will indicate evidence of a criminal offence; where the authority is failing to comply with its legal obligations; that a miscarriage of justice has occurred or may occur; that the health and safety of anyone has been endangered; or that the environment has been damaged. The Government makes clear its view that disclosure in order to make political capital is not in the public interest.

There is comment that the current drafting might be clarified further to make it clear that the rules on disclosure of information cover information received by a member in his official capacity or which relates to the work of the Council.

**Question 1.** Does the proposed text of the disclosure of confidential information strike an appropriate balance between the need to treat certain information as confidential, but to allow some information to be made public in defined circumstances when to do so would be in the public interest?

Suggested response 1. The Government's own comment on clarification is one it should pursue to avoid the situation where, for example, the confidential information is acquired in a private capacity but disclosed in relation to work of the Council. As, even with the existing Code, there appear to be disclosures of confidential information, any relaxation of the Code should be closely defined and it may be that the circumstances where the public interest is served should be set out in regulation rather than left to Standards Board Guidance.

8. Behaviour outside official duties – paragraphs 4 and 5 of the current code.

At the Committee's last meeting, I reported on the effect of the Court of Appeal decision in relation to the Mayor of London, Ken Livingstone's case. The Court of Appeal's ruling was that Section 52 of the Local Government Act 2000 only applied the Code to a member's conduct "in performing his functions". This interpretation restricted situations in a member's private life which would be caught by the Code to those where there was a direct link with the member's office eg where a member uses his office for personal gain.

The Court's interpretation did not coincide with that of the Government or of the Standards Board. The Government's response has been to include an amendment to Sections 49 to 52 in the Local Government and Public Involvement in Health Bill. The new paragraph 4(2), assuming the amendment in the Bill is passed, would provide that only private behaviour for which the member has been convicted by a court should be proscribed conduct, and not conduct falling short of a criminal offence. This is narrower than the Standards Board recommendation which was to include behaviour regarded as criminal but the subject of a conviction.

**Question 2.** Subject to powers being available to us to refer in the code to actions by members in their private capacity beyond actions which are directly relevant to the office of the member, is the proposed text which limits the proscription of activities in members' private capacity to those activities which have already been found to be unlawful by the courts, appropriate?

Suggested response 2. - The question raises a different question to that one might expect from the foregoing text. Activities may be unlawful in the civil or criminal courts. Certainly the same conduct may give rise to a criminal prosecution and a civil action eg theft, assault. One of the differences between the two court processes is that, in the former, the standard of proof on the prosecution is proof beyond a reasonable doubt, whereas in the civil action the claimant's standard of proof is the balance of probabilities. There have been many cases where a defendant has been acquitted because the prosecution has failed to discharge the burden of proof, but a civil action has been successful. In those circumstances, it might be that the Standards Board recommendation more accurately reflects the view of the electorate.

9. Commission of offence before taking office – the new paragraph 4(2) reflects the Government's acceptance that conviction of an offence whilst in office brings the member's office or authority into disrepute, and extends this to offences committed before but convicted after election.

10. Using or seeking to use improper influence – the existing paragraph 5(a) is amended to include attempts to use.

Paragraph 5(b)(ii) has been simplified and clarifies the intention that an authority's resources should not be used improperly for party political purposes.

11. Publicity Code – the proposal is to amend the Code to require a member to have regard to the guidance set out in the local authority publicity code. The Code of Recommended Practice on Local Authority Publicity ( which can be seen at <http://www.communities.gov.uk/index.asp?id=1133867>) provides guidance about the content, style and distribution of promotional activity and material produced by authorities, supplementing the basic requirement in the Local Government Act 1986 that local authorities must not use their resources for political purposes.

**Question 3.** Is the Code of Recommended Practice serving a useful purpose? If the Publicity Code is abolished, do consultees think some or all of its provisions should be promulgated in a different way, eg via guidance issued by local government representative bodies, or should authorities be left to make their own decisions in this area without any central guidance? Should authorities not currently subject to the Publicity Code be required to follow it, or should the current position with regard to them be maintained?

Suggested response 3. – This seems to be a slight of hand by the Government, incorporating consultation on this long- standing guidance into consultation on amendments to the Code of Conduct. There are many areas where local authorities may wish to make their own decisions without having to have regard to central government guidance. However, government guidance does serve its purpose and provides a standard. It may be that the Code itself needs revision again but that would require detailed consideration and response. On the final question, if the Code of Conduct is incorporating reference to the Code of Practice, then it would make sense to extend its application to all bodies governed by the Code of Conduct.

12. Reporting breaches of the Code and proscribing intimidation – the amended Code will delete the current duty in paragraph 7 of the Code for members to report breaches of the Code by other members. The new 2(2)(c ) proscribes intimidation or attempted intimidation of any complainant, witness or person supporting the administration of an investigation or proceedings. This is seen as necessary particularly in light of the proposed greater delegation of functions to the monitoring officer and standards committee.
13. Gifts and hospitality – currently the Code provides for members to notify the monitoring officer of the receipt of such over the value of £25. There is no public register of gifts and hospitality. The proposed amendments provide that the receipt of gifts or hospitality over £25 in

value should be registered as a personal interest. In the interests of proportionality, the duty to disclose the interest would cease after 5 years, though the interest would remain on the register.

**Question 4.** Does the proposed text with regard to gifts and hospitality adequately combine the need for transparency as well as proportionality in making public information with regard to personal interests?

Suggested response 4. – If this is to be adopted, then it is suggested that there is clear guidance from the Standards Board on what will amount to gifts and hospitality.

14. Body influencing public opinion – the new paragraph 7(b)(iv) makes it clear that membership of a political party is a personal interest.
15. Interests of family, friends and those with a close personal association – to amend reference in the current code to friends and family by adding reference to any person with whom the member has a close personal association (paragraph 7(c)(i) and elsewhere). This concerns personal interests arising from the affect on the wellbeing of the member, or the member’s relatives or friends. The addition of “close personal association” is intended to include a range of personal, business and professional associates, not usually regarded as “friends”.

**Question 5.** – Does the proposed text relating to friends, family and those with a close personal association adequately cover the breadth of relationships with ought to be covered, to identify the most likely people who might benefit from decisions made by a member, including family, friends, business associates and personal acquaintances?

Suggested response 5.- This would seem to seem to be adequate.

16. Definition of personal interests – this is an important amendment to the Code so that the affect on the well-being of the member is compared to that of the majority of inhabitants of the ward affected by the matter, not of the authority’s area. The Government’s view is that narrowing the definition will provide a more locally-based focus, and reduce the number of personal interests which arise by requiring that an interest would arise only where the interest would be higher than most people in the local area affected by the matter.
17. Disclosure of personal interests – the amended Code acknowledges that members should only be required to declare a personal interest arising out of relationships with relatives, friends and close personal associates where the member is aware or ought reasonably to be aware of the interest of that other person.
18. Public service interests – this is a new concept under the Code. Paragraph 9 of the existing code requires a member with a personal

interest to declare the interest at the commencement of the meeting or when the interest becomes apparent.

A public service interest is defined as an interest which arises where a member is also a member of another public body, to which they have been appointed or nominated by the authority, or of which they are a member in their own right. Members would still be required to enter any such interest in the register of interests.

The proposal is that public service interests will only be required to be declared at such time as the member speaks on the relevant issue.

#### 19. Prejudicial interests – list of exemptions

This clarifies and adds to those classes of prejudicial interests which are not regarded as prejudicial under the Code. There are three new categories:-

- Indemnities. This relates to matters concerning the issue of indemnities to members.
- Setting of the council tax.
- Considering whether or not whether the member should become a freeman of the authority.

The consultation paper states that the Government proposes to amend the Local Authorities (Code of Conduct) (Local Determination) Regulations to allow a member to attend a hearing of a standards committee into his or her conduct in order to be able to defend him/herself.

**Question 6.** Would it be appropriate for new exceptions to be included in the text as additions to the list of items which are not to be regarded as prejudicial?

Suggested response 6. Members instructions are requested.

20. Overview and Scrutiny Committees – the Code is amended so as to prevent members scrutinising decisions of a committee of which s/he was a member at the time of the decision and in which the member participated. The proscription is extended to a member of a scrutiny committee scrutinising an executive decision made when s/he was a member of the executive and involved in the decision.

21. Participation in relation to prejudicial interests – The general test for prejudicial interests is unchanged. The new paragraph 9 provides that the public service interest is not prejudicial unless the matter relates to the financial affairs of the body in question or to the determining of any approval, consent, licence, permission or registration in respect of that body. Even where either of these situations exist, the member will not

have a prejudicial interest where they attend a meeting to make representations, answer questions or give evidence, provided that the committee agrees that the member may do so. Having participated to this extent, the member is then required to withdraw from the meeting room. It would seem that a member with such an interest, who does not participate in this way, has to declare the prejudicial interest and leave the meeting room as soon as the item is called as under the existing Code. The provision in the Code that a member with a prejudicial interest should not seek improperly to influence a decision about the matter continues in respect of all categories of prejudicial interest.

Public service interests for the purposes of declaration of personal interests are defined as interests in matters relating to:-

- Another relevant authority of which s/he is a member
- Another public body in which s/he holds a position of general control or management; or
- A body to which he or she is appointed or nominated by the authority

For the purposes of declaration of a prejudicial interest and participation in relation to prejudicial interests, public service interests include matters as stated above but also an interest in a matter where it relates to a charity, a lobbying or philanthropic body of which s/he is a member.

**Question 7.** – is the proposed text, relaxing the rules to allow increased representation at meetings, including where members attend to make representations, answer questions or give evidence, appropriate?

Suggested response 7 – the wording would seem to be appropriate.

22. Sensitive information –registration of all personal interests is required under the existing Code. The amended Code permits for the non-registration by a member of sensitive information, ie information the registration of which creates or is likely to create a serious risk of violence or intimidation to the member or a person who lives with the member. The member has first to make application to the monitoring officer who will consider whether the application of this paragraph of the Code is appropriate. When declaring such an interest at a meeting, the member must declare that s/he has a personal interest but does not have to disclose the nature of the interest.

23. Gender neutrality of language – in order to promote a more inclusive approach the Government proposes to make the language of the Code



gender neutral so that “he “ becomes “he or she”, and not to rely on the usual rules of statutory interpretation where the male includes the female and the singular includes the plural.

**Question 8.** - is there a better, more user-friendly way of ensuring the text is gender neutral, for example, would consultees consider that amending the wording to say “you” instead of “he or she” would result in a clearer and more accessible code for members?

Suggested response 8. – use of the second person would probably have the effect of making the Code clearer and more accessible.

Equalities & Community Cohesiveness	<input type="checkbox"/>
Crime and Fear of Crime (Section 17)	<input type="checkbox"/>
Risk Management	<input type="checkbox"/>
Environmental issues	<input type="checkbox"/>
Economic / Financial implications	<input type="checkbox"/>
Human Rights Act	<input checked="" type="checkbox"/>
Organisational Consequences	<input checked="" type="checkbox"/>

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